powers I am entitled to consider whether the respondent was properly convicted. I have read the evidence and I am satisfied that there was abundant evidence from which the learned Magistrate was entitled to find, and was justified in finding, that the accused had committed the offence alleged. I see no reason to go behind the finding of the learned Magistrate in this respect. I am therefore concerned solely with the question of sentence.

The respondent was a Special Constable on duty at a gate check at a new village; his duty being to ensure that food and restricted articles were not taken out of the village in contravention of regulations and orders under the Emergency Regulations. His job was to play his part however small in giving effect to the food denial operations which are so essential to the success of operations to end the Emergency. Of course, such a position provides abundant opportunities to persons who are dishonest and who do not appreciate the importance of the duties which they are called upon to perform to extract presents from members of the public, especially simple villagers — in this case of a female rubber tapper. It is so easy to do and so difficult to find out because in the vast majority of such cases the victim would not be likely to make a report.

I regard this as a most serious offence and I simply cannot comprehend the reasoning of the learned Magistrate in his observations on sentence at the end of his grounds of decision. I presume that there are in this country thousands of Special Constables who are employed at the same income as the accused, and it would be a very alarming prospect if the smallness of their income was to be taken as an excuse for extorting money from the public. Furthermore, the learned Magistrate took into account that the result of conviction will be dismissal from the Police. I should have thought that was an obvious and necessary consequence of what the respondent has done, and that it had very little bearing, if any, upon the forensic consequences of his crime. In all the circumstances, I consider that the learned Magistrate ought to have imposed a sentence of imprisonment notwithstanding the fact that the accused may have been a person with no previous criminal record.

I set aside the sentence of a fine. I see that it has been paid and I order that it be refunded, and I substitute the sentence of six months' imprisonment.

Order accordingly.

PUBLIC PROSECUTOR v. LAM KOK LOONG AND ORS.

[R.Cr.J. (Good J.) August 21, 1958]

[Ipoh — Criminal Revision No. 16 of 1958]

Gaming — Forfeiture of money not found on the premises — Common Gaming Houses Ordinance, 1953, s.16(2) — Binding over under s.173A (i) (b) Criminal Procedure Code (Cap. 6.)

In this case four persons were charged under the Common Gaming Houses Ordinance, 1953, with assisting in the management of the place used as a Common Gaming house namely, The International Club, Kroh. All the accused were bound over under section 173(a) of the Criminal Procedure Code. After arriving at that result, the learned Magistrate proceeded, on the application of the prosecution, to order the forfeiture of a sum of $1,821.50 standing in the name of the Club with the Chartered Bank at Butterworth, which sum was proved in the course of evidence to represent the profits from the gaming in respect of which the four accused had been bound over.

On reconsidering the correctness of his order of forfeiture the learned Magistrate brought the matter to the notice of the High Court.

Held: section 16(2) of the Common Gaming Houses Ordinance, 1953 does not empower the Court to order forfeiture of any money which is not found in a Common Gaming House or on any persons found therein or escaping therefrom.

CRIMINAL REVISION.

Abdul Kadir bin Yusof (Federal Counsel) for the Public Prosecutor.

Respondents not represented.

Good J. (giving oral judgment): — In this case four persons were charged under the Common Gaming Houses Ordinance, 1953, with assisting in the management of a place used as a common gaming house, namely, The International Club, Kroh. In the event they were all bound over under section 173A (i) (b) of the Criminal Procedure Code. But after arriving at that result, the learned Magistrate proceeded, on the application of the prosecution, to order the forfeiture of a sum of $1,821.50 standing in the name of the Club with the Chartered Bank at Butterworth, and proved in the course of the evidence to represent the profits from the gaming in respect of which the four accused had been bound over.

The learned Magistrate subsequently had second thoughts about the correctness of his order for forfeiture, and he very properly brought the matter to my notice in order to give me an opportunity of exercising my powers of revision if I should consider that order was wrong. He purported to act under section 16(2) of the Common Gaming Houses Ordinance, 1953. That sub-section is perfectly clear and it is not

the business of the Court to read into it anything more than what is expressed in it. It says:

"All instruments or appliances for gaming, money, securities for money, and other articles found in a common gaming house or any persons found therein or escaping therefrom and which the Magistrate is of opinion were used or intended to be used for any game or lottery shall be declared by him to be forfeited to the Government and shall be dealt with accordingly."

It is perfectly clear that if this money had been found on the premises by the police, and if the Magistrate was of the opinion that the money had been used in gaming which went on in the Club, he would have been bound to order its forfeiture. As the money was not found in a common gaming house or on any persons found therein or escaping therefrom, section 16(2) can have no application whatever to this matter. It would have been perfectly simple for the Legislature if it had intended to authorise what has been done in this instance to have said:

"Or any money, etc., which the Magistrate is satisfied was the subject-matter of the offence under the Ordinance"

or words to that effect. It only required the insertion of a few words in that sub-section to catch money which though not found on the premises or on any persons there could be traced as being the proceeds of the gaming which took place there. The Legislature has not said that and, in my opinion, that sub-section could not be invoked in order to forfeit the money in the Chartered Bank.

The question then arises whether although the Magistrate was not bound under that section to order forfeiture there was any other power giving him a discretion to order forfeiture. The only other place where one can look for it is in the Criminal Procedure Code. If it is not in the Common Gaming Houses Ordinance itself, it must be in the Criminal Procedure Code if it exists at all. I have looked at Chapter XLI which deals with the disposal of property the subject of offences. And, here again, by reason of the fact that this money was never produced before the Court, was never in the custody of the Court and was never in the custody of the police, section 407(ii) of the Criminal Procedure Code has no application either. It is a very odd state of affairs that as a result of this ruling the Club is going to get the benefit of money which is the proceeds of gambling in respect of which these four people were found to have committed offences. That seems to me to be an unfortunate result of the wording of the only two sections of law which can have any possible application to this matter.

I set aside the order of forfeiture of the sum of $1,821.50 which is in the Chartered Bank, Butterworth, in the name of the Kroh International Club.

Order accordingly.

CHOW YONG HONG v. CHOW SEE LIM & ANOR.

[O.C.J. (Smith J.) September 23, 1958]

[K.L. — Civil Suit No. 149 of 1958]

Practice and Procedure — Costs awarded in interlocutory proceedings — Whether payable forthwith — R.S.C. 1957, O. 14 r. 9.

This was an application by the plaintiff for an order that the payment of the taxed costs awarded under Rules of Supreme Court, O. 14 r. 9 to the defendants upon being given unconditional leave to defend be postponed until the suit was finally decided.

The form of the Order as drawn up was as follows: "And it is further ordered that the costs of appeal be paid by the plaintiff/respondent to the defendants/appellants as taxed by the proper officer of the Court."

The defendant after having his costs taxed attempted to levy execution in respect of these costs. The stay of execution was sought because of the attempted execution.

Held: (1) the proceedings were purely interlocutory and should follow the general rule of interlocutory proceedings and that the costs should be settled at the end of the action;

(2) under O. 14 r. 9(b) the only condition justifying an order for payment of costs forthwith is when the plaintiff in the opinion of the Judge knew that the defendants relied on a contention which would entitle them to unconditional leave to defend.

Cases referred to:—

(1) *Graham v. Sutton, Carden & Co.*, (1897) 2 Ch. 367.

(2) *Ex parte Hauxwell, In re Hemingway* (1883), 23 Ch.D. 626, 643.

(3) *Philipps v. Philipps* (1879-80), 5 Q.B.D. 60.

APPLICATION FOR STAY.

R. Ramani (*B. P. Khoo* with him) for the plaintiff.

Kam Woon Wah for the defendants.

Cur. Adv. Vult.

Smith J.: — This is an application by the plaintiff for an order that the payment of taxed costs awarded under O. 14 r. 9 by the learned Judge to the defendants upon being given unconditional leave to defend be postponed until this suit is finally decided.